

REMARKS

Introduction

Claims 11 and 24 have previously been cancelled without prejudice. Claims 1-10, 12-23, and 25-28 are currently pending in this case.

Claims 1-10, 12-23, and 25-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Friedland et al. U.S. Patent 6,449,601 (hereinafter "Friedland") in view of Rackson et al. U.S. Patent 6,415,270 (hereinafter "Rackson").

Reconsideration and allowance of this application in light of the following remarks is hereby respectfully requested.

The Rejections Based on 35 U.S.C. § 103

Claims 1-10, 12-23, and 25-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Friedland in view of Rackson. These rejections are respectfully traversed.

Claims 1-10, 12, 26, and 27

As defined by applicants' independent claim 1, a method of accepting prebids in advance of a live auction includes allowing bidders to transmit prebids, wherein at least one prebid transmitted includes "a maximum prebid amount" and "an opening prebid amount in addition to the maximum prebid amount." This flexible prebidding is shown, for example, by step 4(d) of applicants' FIG. 4 and by the sample web page of applicants' FIG. 6, and allows "a bidder to submit an opening prebid (signified by the minimum prebid amount) as well as the highest amount which they are willing to bid (their maximum prebid amount)," on an auction lot such that the system may "automatically increment the flexible prebids within the range defined by their minimum and maximum prebid amounts to effectively conduct an 'auction before the auction' to ascertain the highest prebid which would be submitted to the live auction of the auction lot in question," (applicants' specification, page 44, line 16

through page 45, line 3). Therefore, each bidder may submit one "prebid" with at least two "prebid amounts" (i.e., their minimum prebid amount and their maximum prebid amount).

Friedland, the Examiner's primary reference, also is directed to live auctions. However, as admitted by the Examiner on page 5, lines 9-11 of the Office Action, "Friedland does not explicitly teach wherein each prebid transmitted includes a maximum prebid amount and wherein at least one of [said] prebids is a flexible prebid that includes an opening prebid amount in addition to the maximum prebid amount," as required by applicants' independent claim 1. The Examiner, on page 5, lines 12-16 of the Office Action, alleges that "Rackson discloses wherein each bid transmitted includes a maximum prebid amount and wherein at least one of the prebids is a flexible prebid that includes an opening prebid amount in addition to the maximum prebid amount when he [Rackson] discloses bidders [that] place bids for the maximum price they would pay for a quantity of the items (col. 6, line 44 to col. 7, line 36; col. 22, line 26 to col. 24, line 55; figs. 4-9)," and that therefore the combination of Friedland and Rackson allegedly renders applicants' claim 1 obvious. While applicants agree with the Examiner that Friedland does not teach the above-quoted limitations of applicants' claim 1, applicants respectfully disagree with the Examiner's characterization of Rackson.

Nowhere does Rackson show or suggest a website system to "accept prebids in respect of an auction lot," let alone such a system wherein at least one of the prebids "includes an opening prebid amount in addition to the maximum prebid amount," as is required by applicants' independent claim 1. Instead Rackson merely describes a multi-auction service system that allows for a user to bid on multiple ones of a particular type of item being auctioned. "A maximum price 416 may be established if one or more items are desired and the bidder may specify an average price for the quantity

desired 420," (Rackson, column 24, lines 16-18). Here, Rackson is describing the ability for a user to define certain rules regarding live bidding on a plurality of items, not "prebids in respect of an auction lot," as required by applicants' claim 1. Moreover, nowhere does Rackson describe accepting a flexible prebid on one particular lot wherein the prebid includes an opening prebid amount and a maximum prebid amount. Instead, Rackson merely describes rules by which an auction system will bid on a plurality of similar auction lots during the course of a live auction.

Whether or not Rackson shows a bid of any type that includes an opening bid amount and a maximum bid amount (the passages pointed to by the Examiner are less than clear in this regard), any disclosure of a bid in Rackson is totally unrelated to the problem in Friedland. Applicants do not pretend to have invented maximum bid amounts. Applicants did invent the use of a maximum bid amount in a particular way for a particular purpose, and the mere bald disclosure of a maximum bid amount in Rackson does not show or suggest the use of a maximum bid amount in applicants' way for applicants' purpose.

Moreover, there is nothing in either Friedland or Rackson, or any other reference of record, that would have caused one of ordinary skill in the art to take a maximum bid amount from Rackson (if it is there -- applicants do not concede this) or from anywhere else and apply it to the problem in Friedland. As the Supreme Court recently recognized, "[i]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (S.Ct. 2007).

Therefore, applicants respectfully submit that Friedland and Rackson, either independently or in combination, do not teach or suggest each and every element of applicants' independent claim 1. Thus, Friedland in view of Rackson does not make applicants'

independent claim 1 unpatentable. Therefore, for at least the above reasons, applicants' independent claim 1 and any claims dependant therefrom, including claims 2-10, 12, 26, and 27, are allowable over Friedland in view of Rackson. Applicants respectfully request, therefore, that the rejection under 35 U.S.C. § 103(a) of applicants' independent claim 1, and any claims dependent therefrom, including claims 2-10, 12, 26, and 27, be withdrawn.

Claims 13-23, 25, and 28

As defined by applicants' independent claim 13, a web site system for accepting prebids from bidders in advance of live auctions includes a prebid control system for receiving the details of a prebid including a maximum prebid amount from a bidder computer. The system of applicants' independent claim 13 further includes recording the prebids in a prebid database and submitting a winning prebid from the prebid database to the live auction, wherein "at least one prebid submitted by a bidder includes an opening prebid amount in addition to the maximum prebid amount."

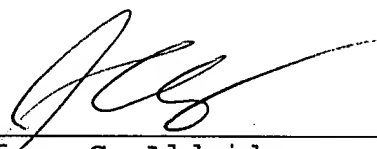
Therefore, for at least the same reasons as described above with respect to applicants' independent claim 1, applicants respectfully submit that applicants' independent claim 13 and any claims dependant therefrom, including claims 14-23, 25, and 28, are allowable over Friedland in view of Rackson. Applicants respectfully request, therefore, that the rejection under 35 U.S.C. § 103(a) of applicants' independent claim 13, and any claims dependent therefrom, including claims 14-23, 25, and 27, be withdrawn.

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Conclusion

The foregoing demonstrates that claims 1-10, 12-23, and 25-28 are allowable. This application is therefore in condition for allowance.

Respectfully submitted,



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